

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID MICHAEL PARTLOW,

Defendant-Appellant.

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UNPUBLISHED

March 8, 2005

No. 249213

Bay Circuit Court

LC No. 02-010318-FC

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

MEMORANDUM.

Defendant appeals as of right from his jury trial conviction of first-degree criminal sexual conduct (CSC), MCL 750.520b(1)(c), and first-degree home invasion, MCL 750.110a(2). We affirm.

On appeal, defendant argues that there was insufficient evidence presented to support his convictions. This Court reviews claims of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999).

MCL 750.520b(1)(c) provides that a person is guilty of first-degree CSC if they engage in sexual penetration with another person and that “sexual penetration occurs under circumstances involving the commission of any other felony.” The home invasion statute, MCL 750.110a, provides in pertinent part:

(2) A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exists:

(a) The person is armed with a dangerous weapon.

(b) Another person is lawfully present in the dwelling.

Defendant argues that the sex in this case was consensual, therefore there was insufficient evidence presented to convict him of first-degree CSC. In addition, he argues that since there was insufficient evidence of CSC, then there was no underlying felony for the first-degree home invasion and that charge should be dismissed as well. We disagree. Consent is a defense to a charge of criminal sexual conduct under MCL 750.520b(1)(c). *People v Thompson*, 117 Mich App 522, 526; 324 NW2d 22 (1982).

The facts presented at trial showed that the victim never knowingly consented to have sex with defendant. Defendant broke into the victim's house, climbed into bed with her, and had non-consensual intercourse. Viewed in a light most favorable to the prosecution, there was sufficient evidence presented to convict defendant of first-degree home invasion and first-degree criminal sexual conduct.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Mark J. Cavanagh  
/s/ Stephen L. Borrello